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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.Z. et al., Persons Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES

Plaintiff and Respondent,

v.

D.Z.,

Defendant and Appellant,

S.Z. et al.,

Appellants.

E061420

(Super.Ct.Nos. J246038 &
J246039)

OPINION

APPEAL from the Superior Court of San Bernardino County. Lily Sinfield,
Judge. Affirmed.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and
Appellant D.Z. (father).

Linda Rehm, under appointment by the Court of Appeal, for Defendant and
Respondent A.Z. (mother).

Lori A. Fields, under appointment by the Court of Appeal, for Objectors and Appellants S.Z. and Jo.Z. (minors).

Jean-Rene Basle, County Counsel, and Jeffrey L. Bryson, Deputy County Counsel, for Plaintiff and Respondent.

Four children, ranging in age from 2 years to 12 years, were removed from parental custody upon mother's arrest for burglary while father was serving a prison sentence. Due to oppositional behavior on the part of the two older boys (Jo.Z. and S.Z.), the children ended up in two separate placements: the two younger children, Ja.Z. and R.Z., were placed in a concurrent planning home with foster parents interested in adoption, while the older boys, Jo. Z. and S.Z., were placed in a group home. At the permanency planning stage, the court selected a goal of long term foster care for the older boys, and adoption for the younger children. The older boys filed a Welfare and Institutions Code¹ section 388 petition seeking standing to participate in the selection and implementation hearing, which was denied. Subsequently, the court terminated the rights of the parents to the younger children, and the older siblings, as well as father, appealed.

On appeal, Jo. Z. and S.Z. argue that the juvenile court abused its discretion by denying their section 388 petition and by terminating parental rights respecting Ja.Z. and R.Z. in light of the sibling bond. Father joined their argument. We affirm.

¹ All further statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

BACKGROUND²

In September 2012, the four minors³ (Jo.Z., age 12; S.Z., age 8; R.Z., age 5; and Ja.Z., age 2) came to the attention of the San Bernardino County Children and Family Services (CFS) when their mother was arrested for burglary and being under the influence of methamphetamine, while their father was in prison. A dependency petition was filed on the children's behalf alleging that the children were persons described by section 300, subdivision (b) based on the parents' substance abuse, engagement in criminal behavior and domestic violence that impaired their ability to parent and posed a substantial risk of harm. It further alleged that the children were described by section 300, subdivision (g) (failure to provide for children), based on the parents' incarceration.

Initially, all four children were detained in the same placement, but two days later they had to be removed because the older boys, Jo.Z. and S.Z., fought constantly, damaging furniture and other items in the foster home. The older boys were also abusive towards their five year-old brother, R.Z. At this point, CFS moved S.Z. and R.Z. to one home, while Jo.Z. and Ja.Z. were placed in another.

The following month, October 2012, S.Z.'s behavior resulted in another complaint to the social worker, and by this time, both older boys had been suspended from school for disruptive behavior and non-compliance in taking the psychotropic drugs prescribed

² Because this appeal challenges an order denying the non-adoptive minors standing to oppose the termination of parental rights, we focus on facts relating to the sibling group.

³ An older sibling, D.Z., age 14, was living with his uncle at the time of mother's arrest, so he was not a party to the dependency proceedings.

for Attention Deficit Hyperactivity Disorder, oppositional defiant and impulsive disorder. Both older boys were moved to a group home due to their violent behavior and school suspension.

On October 30, 2012, the court conducted the combined jurisdictional and dispositional hearing, making true findings under section 300, subdivisions (b) and (g), and removing the children from the parents' custody. The court ordered reunification services for mother, but not for father, based on the length of his incarceration.

In December 2012, Jo.Z. was still acting out in the group home into which both he and S.Z. had been placed, and both older boys had been expelled from school based on violent behavior at school and bringing alcohol to class. Psychotropic medication was prescribed for both boys with court approval.

In April 2013, the social worker submitted a six-month status review report. According to the report, the younger children, Ja.Z. and R.Z., remained in their concurrent planning foster home, while the older boys received intensive services in the group home. CFS recommended that the children remain so placed. The report also noted that the siblings visited twice per month for two hours, although Jo.Z. had not attended several visits. The social worker commented that sometimes he returned from school mentally unable to take on the challenge of a car ride to visit his siblings. Eventually, the foster parents for the younger children allowed the older boys to come to their home on day passes, and the children got along well. The report indicated that S.Z. was more engaged with his younger siblings and that Jo.Z. took on a parentified role with respect to the younger children.

The report described R.Z. as adapting well to the foster home, but also described two troubling incidents of attempted self-harm occurring in February 2013. On one occasion, R.Z. had tied a jump rope around his neck at school, and the next day he put a plastic bag over his head. When asked why he did this, R.Z. responded that he wanted to go live with his brothers. Around this same period of time (February 2013), R.Z. told a therapist that he had trouble going to sleep because he cried and missed his family. He was sad after his older brothers left. For their part, both Jo.Z. and S.Z. reported they enjoyed outings and day passes to visit their younger siblings. The six-month status review hearing took place on April 30, 2014. The children were continued as dependents and reunification services were continued for mother, who was ordered to participate in the plan.

By September 2013, CFS applied for court approval of psychotropic medication for S.Z., who was diagnosed with intermittent explosive disorder in addition to ADHD. The following month, the social worker submitted a report for the 12-month status review hearing. The report indicated that the younger children remained in their concurrent planning home, were thriving, and their caretakers wished to adopt them. It also indicated that all the children visited monthly at the home of the caretakers, where the older boys had weekend passes to spend from Friday through Sunday with their younger siblings. The children got along well; S.Z. was more engaged with the younger children, and Jo.Z. took on a more parentified role.

The social worker also reported that S.Z. was compliant with his medication regimen, although Jo.Z. continued to act out at school and refused to take his medication

at times. The group home therapist informed CFS that if Jo.Z.'s behavior did not improve, the group home would have to give a seven-day notice (for his removal); however, Jo.Z. wanted to stay in the group home to be there for his younger brother. The report also indicated that the younger children were bonded to their adoptive parents, who were unwilling to adopt the older boys due to their disruptive behavior.

On October 2, 2013, the group home served a seven-day notice for Jo.Z.'s removal, recommending that he be placed in a setting with a higher level of structure, but that he be placed close to the group home so that visits with S.Z. could be maintained.

On October 31, 2013, the mother set the 12-month review for a contested hearing, requesting additional services and seeking an assessment of her brother's home for placement of the children to keep the children together. At that time, minors' counsel reported that visitation between the older boys and their father went well, but that the younger children had not been included. Minors' counsel also informed the court that at some point, there would be a conflict of interest necessitating the appointment of separate counsel. County Counsel agreed to an assessment of the maternal uncle's home for possible placement of the older boys, but not for the younger children because they were in a concurrent planning home. The matter was set for a contested hearing and CFS was ordered to assess the maternal uncle for possible placement.

On January 6, 2014, the social worker submitted an addendum report recommending termination of services for mother and referral for a section 366.26 hearing. Respecting the children, the caretakers reported that the younger children acted out after visits with their parents, becoming irritable and wetting their beds. The older

boys also acted out negatively after contact with their parents. Jo.Z. reported he believed that he and his siblings were removed from parental custody unjustly.

On January 14, 2014, the contested 12-month review hearing took place. The court terminated services for mother and set a section 366.26 hearing for the younger children. The court found the older boys were not adoptable and ordered a permanent plan of placement at Child Help Group Home with a specific goal of a less restrictive foster setting. The court ordered sibling visits to occur twice per month.

On May 6, 2014, the social worker submitted a section 366.26 report, recommending that the younger children be freed for adoption. The report documented that R.Z. was having difficulty regulating his emotions at school and at home. However, the social worker described mutual bonding and attachments between the younger children and their caretakers.

The report included information from the caretakers as well as a quarterly report from the Greater Hope Foster Family Agency (FFA), which monitored the visits. The caretakers referred to visits between the younger children and their older brothers as good, with good engagement between the older brothers and the younger siblings, although on occasion Jo.Z. was unable to visit his younger siblings due to behavior problems. The FFA report on visits referred to Jo.Z.'s behavior as preventing him from visiting more than once, but also indicated he declined to attend one sibling visit.

On May 23, 2014, the older boys filed a petition pursuant to section 388, subdivision (b), requesting (1) standing at the section 366.26 hearing respecting their younger siblings; (2) an order that the court will not terminate parental rights as to the

younger siblings; or (3) an enforceable post adoption contract for sibling visitation to continue. The court ordered a hearing on the petition and directed CFS to respond to it. CFS responded to the petition acknowledging that the younger children were raised in the same family with their older siblings, where they were parented by the same parents until their removal in September 2012. It further acknowledged that they shared similar experiences, in that all were exposed to the parents' domestic violence and substance abuse: R.Z. was raised in the family home until he was five, while Ja.Z. was raised there until she was two.

CFS's opposition to the petition went on to discuss the fighting between the older boys which caused the initial separation of the siblings at the beginning of the proceedings, and referred to the fact that the older boys had been physically abusive to R.Z. when they were placed together. The adoptive mother reported that the younger siblings were bonded to the older siblings at the time of the initial placement, but that the bond had dissipated. The adoptive mother also opined that Jo.Z. never had a bond with his younger siblings because at visits he had to be prompted to interact with them. Further, the adoptive mother indicated that neither Jo.Z. nor S.Z. telephoned their younger siblings.⁴

The opposition by CFS included the FFA report of sibling visits between January and May 2014, which revealed the children played hard together, got along well, and that

⁴ The report does not indicate whether the older boys were *able* to telephone the younger siblings in the group home. We are aware that both older boys missed some visits due to their behavior, so we cannot ascribe the lack of telephone contact solely to any lack of bond with the younger children on this record.

the older brothers were sad on one occasion when Ja.Z. could not attend due to illness. The summary described Jo.Z. as engaging with his younger siblings, and how S.Z. hugged his younger siblings and told them that he loved them on more than one occasion.

The social worker pointed out in the opposition to the 388 petition that the adoptive parents were willing to resume overnight visits between the younger and older siblings so long as the behavior of the older children warranted it, and noted that Jo.Z. had missed some visits due to his behavior. Jo.Z. had only recently started complying with his medication regimen. Both older boys continued to have behavior problems.

The social worker acknowledged the siblings had a bond and shared experiences from their family of origin. However, the social worker could not conclude that the bond between the older siblings and the younger siblings would not be broken if the younger siblings were adopted because the adoptive parents were willing to continue sibling visits “should the contact between the four siblings be beneficial.” In her opinion, the benefit of permanency for the younger children outweighed the sibling bond given that the adopting family had demonstrated a willingness to support the relationship.

On June 2, 2014, the court conducted hearings on the section 388 petition, as well as for the selection and implementation of a permanent plan of adoption for the younger children. The court denied the section 388 petition filed by the older boys, and terminated parental rights as to the younger children, freeing them for adoption. The older boys appealed. Subsequently, father appealed from the termination of his parental rights.

DISCUSSION

A. *The Juvenile Court Did Not Abuse Its Discretion in Denying the Older Siblings' Section 388 Petition.*

On appeal, the two older siblings argue that the juvenile court abused its discretion in denying their section 388 petition, seeking standing to participate in the section 366.26 proceedings. Father and mother separately join the arguments of the older boys (the petitioning minors or siblings). We review a ruling on a petition filed pursuant to section 388 for abuse of discretion and may not disturb the decision of the trial court unless that court has exceeded the limits of judicial discretion by making an arbitrary, capricious, or patently absurd determination. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318; *In re Aaron R.* (2005) 130 Cal.App.4th 697, 705.)

Section 388, subdivision (b), permits any person, including a child who is a dependent of the juvenile court, to petition the court to assert a relationship as a sibling, request visitation with the dependent child, placement with or near the dependent child, or consideration when determining or implementing a case plan or permanent plan for the dependent child, or make any other request for an order which may be shown to be in the best interest of the dependent child. This provision was added by way of amendment in 2000. (*In re E.S.* (2011) 196 Cal.App.4th 1329, 1336 [Fourth Dist, Div. Two].)

A request to be heard under section 388, subdivision (b) should be granted if a sibling complies with section 388, subdivision (b)(1)-(4) and demonstrates a close relationship with the minor (or minors) being considered for adoption. (*In re Hector A.* (2005) 125 Cal.App.4th 783, 788-789.) As used in the statute, the term “dependent

child” refers to the adoptive sibling or siblings with whom the petitioning party seeks to assert a relationship or other relief under section 388, subdivision (b). (*In re E.S.*, *supra*, 196 Cal.App.4th at p. 1337.)

The factors to be set out in the petition include: (1) Through which parent the petitioning minor is related to the dependent child; (2) Whether he or she is related to the dependent child by blood, adoption, or affinity; (3) The request or order that the petitioner is seeking; and (4) Why that request or order is in the best interest of the dependent child. (§ 388, subd. (b)(1)-(4); *In re Hector A.*, *supra*, 125 Cal.App.4th at p. 792.)

In order for the nonadoptive siblings to obtain the right to be heard, they need not prove that they will prevail in opposing the adoption in order to obtain the right to participate in the hearing. (*In re Hector A.*, *supra*, 125 Cal.App.4th at p. 793.) The petitioning siblings need show only that there is a sufficient bond with the adoptive children that the best interests of those children require full consideration of the impact of interfering with that relationship before a decision is reached on the permanency plan. (*Ibid.*)

Not all sibling relationships are strong or healthy. (*In re Hector A.*, *supra*, 125 Cal.App.4th at p. 794.) The reviewing court in *Hector A.* recognized that many siblings have a relationship with each other, but would not suffer detriment if that relationship ended, and if the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship. (*Ibid.*; *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952, fn. omitted.)

A section 388, subdivision (b) petition does not call upon the court to weigh the detriment of interfering with the sibling relationship against the advantages to the adoptive dependent of adoption, but merely to determine whether there is a sufficiently close relationship between the siblings that the nonadoptive sibling should be permitted to urge consideration of the factor at the section 366.26 hearing. (*In re Hector A.*, *supra*, 125 Cal.App.4th at p. 795.) To determine the significance of the sibling relationship, the court considers the nonexclusive factors set forth in section 366.26, subdivision (c)(1)(B)(v). (*In re Hector A.*, *supra*, 125 Cal.App.4th at p. 794, citing *In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 952 [referring to the predecessor statute, § 366.26, subd. (c)(1)(E)].)

Here, the court acknowledged (as did CFS) that the children had a sibling bond and shared experiences. However, due to the severe behavioral problems of the petitioning minors, the sibling bond and shared experiences cannot be described as healthy or beneficial to the younger children. Jo.Z. rarely engaged with the adoptive siblings during visits until the last six months of the dependency, and it was his violent behavior that led to the disruption of the sibling group. The record describes the interaction of the petitioning minors with R.Z. as abusive prior to the removal of the petitioning minors. It is true that the petitioning minors were diagnosed with mental health issues for which they lately decided to take their medication, but until the last stage

of the dependency, they refused to take the medication which might have improved their behavior and permitted more visits, or more significant contact with their siblings.⁵

In this respect, the petitioning minors recognize that the court was required to focus on the child being considered for adoption, rather than the petitioning siblings, but argues that the court did not consider the younger children's wishes or feelings about their older siblings in ruling on the issue. We agree there is relatively little information about the younger children's feelings toward their older siblings, aside from their reactions to and at sibling visits, but that was not attributable to court error. The burden was on the petitioning minors to prove that the adoptive minors would suffer detriment from loss of the sibling relationship. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317; *In re B.D.* (2008) 159 Cal.App.4th 1218, 1228; see also *In re D.B.* (2013) 217 Cal.App.4th 1080, 1089.)

The petitioning minors established a bond and shared experiences, but up to the point where the sibling group was separated, that bond and those experiences were not shown to be substantial or beneficial to the younger children. Instead, the weight of the evidence shows the relationship was detrimental to the adoptive children. The evidence presented to the court failed to demonstrate that the bond was substantial enough to require full consideration of the impact of interfering with that relationship at the selection and implementation hearing.

⁵ The bad behavior of the petitioning minors caused them each to miss visits on more than one occasion.

B. *The Appealing Minors May Not Challenge the Termination of Parental Rights, Which Is Supported by Substantial Evidence.*

The petitioning minors argue that the trial court erred in terminating parental rights by performing an erroneous legal analysis of the sibling exception to section 366.26 which led it to conclude there were no significant sibling bonds warranting protection and that adoption would not be detrimental to the adoptive minors. However, the denial of the section 388 petition left the petitioning minors without standing to challenge or object to the termination of parental rights on the basis of a sibling bond. (*In re J.T.* (2011) 195 Cal.App.4th 707, 717-718; see also, *In re Celine R.* (2003) 31 Cal.4th 45, 54-55.) We therefore decline to reach the merits of this claim.

It is well settled that standing to appeal extends only to a party aggrieved by the order appealed from. (§ 395; Code Civ. Proc., § 902; *In re J.T.*, *supra*, 195 Cal.App.4th at p. 717, and cases cited there.) “A ‘lack of standing’ is a jurisdictional defect.” (*In re D.M.* (2012) 205 Cal.App.4th 283, 294, quoting *Hudis v. Crawford* (2005) 125 Cal.App.4th 1586, 1592.)

The interest of the petitioning minors in their relationship with the adoptive minors is separate from that of the parent. (*In re J.T.*, *supra*, 195 Cal.App.4th at p. 717.) A parent has standing to raise the sibling exception to adoption because successful application of that exception would preclude termination of parental rights, which clearly impacts the parent-child relationship. (*Id.*, at p. 719.)

The sibling relationship may present a cognizable interest, but the interest in maintaining the sibling relationship relates to the adoptive minors’ interests, not the

petitioning minors. (*In re Celine R.*, *supra*, 31 Cal.4th at p. 55.) Even if the section 388, subdivision (b) petition had been granted, giving the petitioning minors permission to assert the sibling relationship exception to adoption and present evidence on the issue, they would not have standing to challenge the termination of parental rights because their legal rights were not impacted by that order. (*In re J.T.*, *supra*, 195 Cal.App.4th at p. 718.)

Because the petitioning minors lack standing to challenge the order terminating parental rights, we do not address the merits of the sibling bond exception.

Father separately appealed from the order terminating parental rights, but his opening brief merely joined in the minors' opening brief. Having presented no separate argument, we consider his challenge limited to the question of whether the sibling bond exception to adoptability applies.

When considering the sibling relationship exception, the concern is the best interests of the child being considered for adoption, not the interests of that child's siblings. (*In re Naomi P.* (2005) 132 Cal.App.4th 808, 822.) Nothing in the statute suggests the Legislature intended to permit a court to not choose an adoption that is in the adoptive child's best interest because of the possible effect the adoption may have on a sibling. (*In re Celine R.*, *supra*, 31 Cal.4th at p. 54.)

However, the siblings' relationship with the child to be adopted is not irrelevant. (*In re Naomi P.*, *supra*, 132 Cal.App.4th at p. 823.) Thus, even if adoption would interfere with a strong sibling relationship, the court must weigh the benefit to the child of continuing the sibling relationship against the benefit the child would receive by

gaining a permanent home through adoption. (*In re L.Y.L., supra*, 101 Cal.App.4th 942, 952-953.) As with the other exceptions to the finding of adoptability the juvenile court examines the sibling bond exception in the context of the child's best interests. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 253.)

Here, the two older children were in a group home for the majority of the dependency proceedings, which lasted approximately two years, and have not lived with their siblings for that time period, although they had visits with their siblings. As a consequence, while the older siblings expressed that they were bonded to the younger children, there is no evidence that the sibling relationship was reciprocal, or that the severance of the sibling bond would be detrimental to the children being considered for adoption. Further, because the children are placed with adoptive parents who agreed to maintain sibling contact, adoption of the older children will not substantially interfere with the sibling relationship. (*In re Megan S., supra*, 104 Cal.App.4th at p. 252.)

There is substantial evidence to support the trial court's finding that the sibling exception to adoptability was not established.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

MILLER
J.